

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.

B.M. Nimal Rajakaruna

Accused-Appellant.

C.A.NO. 143/2010

H.C.Negombo No. HC 37/2004

Vs.

Hon. The Attorney General

Respondent

BEFORE : SISIRA J. DE ABREW, J.(ACTING P/CA) &
P.W.D.C.JAYATHILAKA, J.

COUNSEL : A.K.Chandrankantha (Assigned Counsel) for the
Accused-Appellant.
Dappula de Livera DSG for the respondent.

ARGUED AND

DECIDED ON : 22nd January, 2014.

SISIRA J. DE ABREW, J.(ACTING P/CA)

Accused-appellant produced by the Prison Authorities is present in Court.

Heard both Counsel in support of their respective cases.

The accused-appellant in this case was convicted of the murder of a woman named Dissanayake Mudiyansele Chandralatha and was sentenced to death. Being aggrieved by the said conviction and the sentence he has appealed to this Court. Facts of this case may be briefly summarized as follows:-

The accused-appellant who failed in his attempts to start a love affair with the deceased girl developed an animosity towards the deceased girl over the refusal by her to start a love affair. The deceased girl was a factory employee in Katunayake area. On the day of the incident around 6.45 p.m. when the deceased girl was walking on the road, the accused-appellant came and stabbed the deceased girl three times. According to the post mortem report there were two stab injuries on the neck and the chest and a cut injury on her jaw. This incident was witnessed by Heenmenika and Sumanawathi who were also

employees of the same factory in which the deceased girl was working. Heenmenika and Sumanawathi were friends of the deceased girl. According to them, the accused, after stabbing the deceased girl, threw the knife away and ran away.

Witness Vass who was an independent witness was passing this place on his motor cycle. On seeing a girl falling on the ground and a man running away from the scene, he gave chase on his motor cycle to the man who was running. He caught the man and people in the area tied the man to a lamppost. The man who was caught by Vass is the accused in this case. The investigating police officer recovered a knife on a statement made by the accused-appellant. The accused-appellant, in his dock statement, stated that on the day of the incident around 6.45 p.m. he saw a man whom he suspected to be the earlier boyfriend of the deceased girl, stabbing the girl and running away from the scene. According to him, he gave chase to the said man but failed to catch him. It has to be noted here that the position taken up by the accused-appellant in his dock statement was not suggested to witness Vass when he was giving evidence. This position was also not suggested to Heenmenika and Sumanawathi. When we consider all these matters it appears that the position taken up by the accused-appellant is an afterthought. Therefore, the rejection of the dock statement by the

learned trial Judge is, in our view, correct. In our view the said dock statement does not even create a reasonable doubt in the prosecution case.

Learned Counsel appearing for the accused-appellant complained to this Court that inadmissible evidence had been led at the trial. Investigating police officer when giving evidence, on a question raised by the prosecuting State Counsel, gave the following answer "It revealed to me. Accused kept the knife which was used to commit the murder." It appears from the evidence that the witness had not completed the answer. In my view, the learned trial Judge in his discretion should have stopped this evidence. This appears to be an item of inadmissible evidence. But it appears from the evidence of the investigating police officer that he recovered a knife in consequence of a statement made by the accused. The said statement reads thus:-" knife was thrown. Knife can be pointed out." In our view, the said statement has not offended section 27 of the Evidence Ordinance. Although the police officer says that the accused had kept the knife which was used to commit the murder, learned trial Judge has not used the said evidence in his judgment. We note that this is a trial by a Judge but, not a trial by a jury. Considering all these matters, we hold that the said evidence given by the police officer has not caused any prejudice to the accused-

appellant. The evidence of the two eye witnesses and witness Vass is convincing to conclude that the accused-appellant has committed the murder of the deceased girl.

We have considered the evidence led at the trial and are of the opinion that the learned trial Judge has rightly convicted the accused-appellant for the offence of murder. We therefore hold the view that we should not interfere with the judgment of the learned trial Judge. We affirm the conviction and the sentence and dismiss the appeal.

Appeal dismissed.

ACTING PRESIDENT OF THE COURT OF APPEAL

P.W.D.C.JAYATHILAKA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/=